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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,808	09/23/2003	Mary K. Shepherd	D00054US	1964

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,808

Applicant(s)

SHEPHERD, MARY K.

Examiner

Francis T. Palo

Art Unit

3644

MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 21-23 and 25-30 is/are rejected.
- 7) ☒ Claim(s) 19, 20 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

Components (38 and 39) as listed in the Specification Parts List conflict with their respective depictions in Figure-11.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors such as those listed above.

Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Appropriate correction is required.

Claim Objections

Claims 18-21, 23 and 24 are objected to because of the following informalities:

Appropriate correction is required.

Regarding claim-18:

The intended use recitation in the preamble is not afforded any patentable weight as a portable greenhouse and a tray are not claimed in the body of the claim; furthermore, the concluding functional "whereby" clause is not held to define any structure.

Art Unit: 3644

The structure recited in the claim(s) is not consistent with the structure recited in the specification; specifically, side rails, cross rails, connector openings and connector pins are each identified differently in the specification and parts list.

Appropriate correction is required.

Regarding claim-19:

The structure "a connector land" as recited in the claim is not consistent with the structure recited in the specification and parts list.

There is no antecedent basis for the structure "connector slot" recited in the claim; a receiving slot is recited in the claim, which is further recited as a recess in the specification and parts list.

Appropriate correction is required.

Regarding claim-20:

Even though the concluding functional "whereby" clause is not held to define any structure, it is unclear to the Examiner how the "tightly received" connector pin (claim-18) and further "detent" (claim-20) detachably cooperates with the side rail as cited.

Appropriate correction is required.

Regarding claim-21:

The vertical sections cited are not labeled in the figures, nor are said sections found in the parts list. Appropriate correction is required.

Art Unit: 3644

Regarding claim-23:

"lateral connector opening" should be --connector opening--.

Regarding claim-24:

See the comments above regarding claim-20.

The "slightly enlarged head" as cited should be labeled in the figures and specification (to include the parts list).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 21-23 and 25-30 are rejected under 35 U.S.C. 102(b)

as being anticipated by Bomze (US 5,169,009)

Art Unit: 3644

Regarding **independent claim-18**:

Bomze depicts in Figure-1 a rack apparatus capable of cooperating in a portable greenhouse having a tray as cited in the claim preamble comprising;

- at least two side rails (20), capable of being supported by a tray and further having lateral connector openings (24) as cited;
- a plurality of cross rails (22) removably connected to the side rails and further having a connector pin disposed on each end as cited.

Regarding **claim-21**:

The side rails (20) of Bomze are readable as having first and second vertical sections (the rail ends) having lower ends connected by the rail, as cited.

Regarding **claim-22**:

The claim is given a reasonable interpretation consistent with the broad recitation.

Bomze as discussed above in the claim-21 rejection depicts a connector opening (24) at the ends of the side rails, which is readable on the transverse recess (see a definition for transverse) for receiving a cross rail as cited.

Regarding **claim-23**:

The discussion above is applicable to the instant claim also.

Art Unit: 3644

Regarding **claim-25**:

The claim is given a reasonable interpretation consistent with the broad recitation.

Since a tray is not being claimed or dimensioned, the side rails of Bomze are capable of the length cited, and the side rails of Bomze are readable as having outwardly opening end notches as cited, as the sandwiched side rails (20) of Bomze have space between them which read on notches.

Regarding claims **26, 28 and 30**:

The cross rails of Bomze are situated as cited in the instant claims, that is, the cross rails of Bomze as depicted, are placed in all of the side rail openings, and also occupy every other and every third opening; given a reasonable interpretation consistent with the broad recitation.

Regarding claims **27 and 29**:

The claim is given a reasonable interpretation consistent with the broad recitation.

Since a tray is not being claimed or dimensioned, the side rails of Bomze are capable of the lengths cited.

Allowable Subject Matter

Claims 19, 20 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Specifically, the structure recited in dependent claim-19 if combined with the parent claim would be considered at this writing an allowable claim; if the Applicant elects to only include the subject matter of claim-20 and/or 24 into the parent claim, the Examiner would upon further consideration and search make a case for the pin configuration as cited, to be an obvious modification.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Holt '995, Caramella '234 and Trimble '055 read statutorily on the independent claims and a number of the dependent claims.

Raab '670 lacking a connector pin as cited in the instant claims, would otherwise read on the independent claim and numerous dependent claims.

Du Bois is cited in reference to the broad claim-18 recitation.

Woerner '213 and Oetlinger '953 because of their filing dates are not considered as prior art, but should be considered by the Applicant, especially the '953 reference.

Art Unit: 3644

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Francis T. Palo
Examiner
Art Unit 3644